

[TRANSLATION]

Citation: *A. G. v. Canada Employment Insurance Commission*, 2015 SSTAD 512

Appeal No. AD-14-594

BETWEEN:

**A. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: April 21, 2015

## **DECISION**

[1] The appeal is allowed and the matter is referred back to the General Division (Employment Insurance Section) for a new hearing.

## **INTRODUCTION**

[2] On October 28, 2014, the Tribunal's General Division found that:

- The Appellant had voluntarily left his employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act* ("the Act").

[3] The Applicant filed an application for leave to appeal to the Appeal Division on December 1, 2014. The application for leave to appeal was allowed on February 26, 2015.

## **ISSUE**

[4] The Tribunal must determine whether the General Division erred in fact and in law in finding that the Appellant had voluntarily left his employment without just cause within the meaning of sections 29 and 30 of the *Act*.

## **THE LAW**

[5] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision or order, whether or not the error appears on the face of the record; or

(c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

## **STANDARDS OF REVIEW**

[6] The parties made no submissions concerning the applicable standard of review.

[7] The Tribunal notes that the Federal Court of Appeal has held that the standard of judicial review applicable to a decision of a Board of Referees or an Umpire on questions of law is correctness (*Martens v. Canada (AG)*, 2008 FCA 240) and that the standard of review applicable to questions of mixed fact and law is reasonableness (*Canada (AG) v. Hallée*, 2008 FCA 159).

## **ANALYSIS**

[8] The Respondent acknowledges that there was a breach of the rule that there is a right to be heard (*audi alteram partem* rule), since the Appellant never received the notice of hearing.

[9] The Tribunal notes that the file shows that the notice of hearing was sent to the Appellant on September 2, 2014, but was returned to the Tribunal on October 10, 2014. The General Division hearing was held on October 1, 2014.

[10] The Respondent respectfully requests that the matter be referred back to the General Division of the Social Security Tribunal (SST) so the Appellant can be heard.

[11] Having regard to the arguments in support of the Appellant's appeal and to the Respondent's position, and after reviewing the file, the Tribunal agrees that the appeal should be allowed.

## **CONCLUSION**

[12] The Tribunal allows the appeal and refers the matter back to the General Division (Employment Insurance Section) for a new hearing by a Member.

[13] The Tribunal orders that the General Division's decision dated October 28, 2014, be removed from the file.

*Pierre Lafontaine*

Member, Appeal Division